

III. Remarks

Applicant would initially like to thank Examiner Wells and Examiner Padmanabhan for the courtesies extended to Applicant's representative during the telephone discussion of July 29, 2003. The Amendment and 132 Declaration are submitted in accordance with this discussion.

Reconsideration of the subject application is respectfully requested in view of the preceding amendments and for the following reasons.

Claims 1-61 are pending in the subject application prior to entry of this Amendment. Of those claims, claims 1-9, 27-30 and 34-35 are withdrawn as being subject to a restriction requirement/election of species. The remaining claims, claim 10-26, 31-33 and 36-61 are rejected in the outstanding non-final Official Action. Of those claims, Applicant cancels, without prejudice, claims 54-61.

Applicant also amends independent claims 10, 16, 37, 40, 41, 44-46 and adds new dependent claims 62-84. Support for the foregoing amendments may be found throughout the specification. For example, support for "acid peel" may be found at page 3, Summary of the Invention section; support for "non-neutralized acid" may be found at page 9, first paragraph, and elsewhere in the specification. Support for "wherein the first composition and the second composition are both applied by massaging into the skin and are substantially completely absorbed into the skin and not thereafter manually removed from the skin ..." may be found at, for example, page 7 (Method of Use description). Support for a liquid viscosity less than about

10 cps may be found in the Examples. Support for a viscosity of about 5 and about 4 also may be found in the Examples (e.g. see Examples 2 and 3; and Example 5, respectively). Support for dependent claims 70-74 may be found at page 15 (Method of Use) and support for dependent claims 75-82 may be found at pages 12-15. No new matter has been introduced into the application.

In the outstanding Official Action, the Patent Office rejects claims 10-15, 24-26, 31-32, 36-37, 39-40, 43, 45 and 47-50 under 35 U.S.C. § 103(a) as being obvious over U.S. Patent No. 5,720,949 to Davis ("Davis"). Similarly, claims 16-21, 46, 51 and 53 are rejected as being obvious over Davis in view of Kunz et al. ("Kunz", see U.S. Patent 6,171,347). Claims 33, 38 and 44 are rejected as being obvious over Davis in view of U.S. Patent 5,242,433 to Smith et al. ("Smith"), and claims 41-42 and 52 are rejected as being obvious over Davis in view of Kunz, and further in view of Smith. Dependent claims 22-23 are rejected as being unpatentable over Davis in view of U.S. Patent 4,797,273 to Linn et al. ("Linn") and STN Registry. Claims 54, 56-57 and 60 also are rejected as being unpatentable over Davis in view of U.S. Patent Publication No. 2002/0098210 to Hahn et al. ("Hahn"), and claims 55 and 61 are rejected under 35 U.S.C. §103(a) as being unpatentable over Davis in view of Kunz and Hahn. Lastly, claim 59 is rejected as being unpatentable over Smith in view of Hahn.

Applicant respectfully traverses the foregoing rejections and asserts that the afore-cited references, whether viewed alone or in combination, neither disclose nor suggest Applicant's presently claimed invention for at least the following reasons.

Applicant respectfully directs the Examiner's attention to Applicant's prior Remarks regarding the above-identified references. In addition to these remarks, Applicant points out that

each of the present independent claims employ a first and second liquid dermatological composition, which are substantially completely absorbed into the skin and not thereafter manually removed from the skin, wherein makeup or other cosmetic is optionally applied thereafter to the skin, in contrast to the teachings of the primary reference, Davis.

In particular, the disclosed viscosities of the Davis "mask" warrant removal from the skin. In describing this cosmetic mask, Davis teaches that a suitable first composition comprises a thickening agent effective to provide a viscosity of from about 50,000 to about 1 million cps at 25°C and a suitable second composition is a gel comprising, in part, a thickening agent effective to provide a viscosity of from about 25,000 to about 500,000 cps at 25°C (Col. 3, lines 30-66 of Davis). These compositions combined to form the cosmetic mask product. This product must be applied to the skin using a spatula or other similar means (Co. 2, line 42) and does not flow appreciably when applied to the skin (Col. 3, line 12; Col. 4, line 41). The mask of Davis results in a thick layer on the skin, which subsequently is manually removed from the skin by means of a cloth or scraper, especially to abrade the skin to remove dirt, dead skin and oil (see Col. 1, lines 35-49; Col. 2, lines 39-41). This mask "is applied to the face of a consumer uniformly and without massaging into the skin" (Col. 12, lines 65-67). At Col. 1, lines 20-49, Davis further distinguishes its cosmetic mask from products that are "generally massaged into the skin of the consumer" and [a]ccordingly, they are not removed." One of ordinary skill in the art would understand from Davis that it would not even be desirable to apply makeup over the thick cosmetic "mask." Applicant respectfully asserts that one skilled in the art seeking to develop that which Applicant presently claims would not even be motivated to look to Davis for guidance.

Applicant further asserts that the addition of the secondary references Linn, Smith, STN

Registry, Kunz and/or Hahn, alone or in combination, does not cure the shortcomings of Davis. For example, Linn and the Registry reference were cited as merely relating to polysorbate and Smith as disclosing pads.

The addition of Hahn also does not cure the shortcomings of the Davis reference. That is, Hahn is directed to reducing skin irritation with the use of calcium metal cations. In particular, Hahn discloses that some topical products contain chemicals which may produce irritation (Page 1, paragraph [0004]). Hahn also discloses the use of the divalent calcium cation (Ca^{2+}) and salts thereof as ingredients to provide topical skin anti-irritant effects (Page 5, paragraph [00031]). Hahn further discloses that the calcium cation may be combined in a topical product formulation (Page 5, paragraph [00034]). Applicant respectfully asserts that Hahn does not teach that all compositions are interchangeable, but rather that its particular calcium cation may be incorporated into various topical vehicles (Page 8, paragraph [0054]). Applicant's claims are not directed to the addition of a calcium cation to reduce irritation, and it is respectfully submitted that one skilled in the art seeking to develop Applicant's presently claimed method and kit would not be motivated to look to this reference for guidance. Nor would one skilled in the art be motivated to even combine this reference with the other cited references and then modify their teachings in an attempt to arrive at the present claims.

Lastly, regarding the Kunz reference, Kunz teaches a method and composition for reductively removing color from dyed hair. The kit described therein is a multi-component kit for coloring hair and then later removing the color. Kunz does not teach nor suggest Applicant's first and second sequentially applied compositions, which are dermatological. In particular, the first composition of Kunz is an oxidative hair dye applied to the hair for the purpose of adjusting hair color. This first composition may be acidic or basic. After the oxidative dye composition

has been applied to the hair, it is rinsed off of the hair and dried. The consumer now has a hair color which has been adjusted by the first composition and can be worn that way until the consumer decides to remove the color.

Kunz then teaches that after a period of time, the consumer may remove the hair color using a stripping composition (second composition). The stripping composition has an acidic pH of 1.8-6 - - the second composition of Kunz is acidic. This acidic stripping (second) composition is not applied directly after the oxidative dying (first) composition in order to neutralize it, but rather is applied after the hair has been rinsed and a period of time has passed. Moreover, one would not even be motivated to apply the oxidative dying (first) composition (i.e. hair dye) and the reductive acidic stripping (second composition) of Kunz to the skin. Applicant respectfully submits that Kunz is concerned with hair color compositions and removal of color from hair, and is not at all concerned with Applicant's sequentially applied dermatological (skin) compositions.

In addition to the above and in accordance with the Examiner's suggestion, a Declaration under 37 C.F.R. § 1.132 showing the criticality of Applicant's claimed sequential application of the first and second dermatological compositions is attached.

In view of the amendments and remarks set forth herein, and the accompanying Declaration, the application is believed to be in condition for immediate allowance and such favorable action is earnestly solicited.

Should the Examiner have any questions regarding the subject application or should any outstanding issues remain, a call to the undersigned at 203-925-9400 (Ext. 17) would be sincerely appreciated.

The Commissioner is authorized to charge our deposit account 50-1924 (ref: 040.0001U1(US)) in the amount of \$270 for the extra dependent claims fee or any further required fee associated with this correspondence.

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Respectfully submitted,

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